

### **DETAILED ACTION**

Prosecution on the merits of this application is reopened on claims 29, 33, 42 and 43 considered unpatentable for the reasons indicated below:

#### ***Allowable Subject Matter***

The indicated allowability of claims 29, 33, 42 and 43 is withdrawn in view of the newly discovered reference(s) to Chow et al (6,389,371). Rejections based on the newly cited reference(s) follow.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 29 and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Chow et al (6,389,317).

With respect to claim 29, Chow et al disclose:

A method of providing a living being with enhanced vision, the method comprising optically coupling an infrared absorbing material to the photoreceptors of at least one eye of the living being [ figure 2 discloses an infrared detector being implanted proximate the photoreceptors of a human eye].

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Claim 33 is taught by column 7, lines 52 to 59.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chow et al (6,389,317).

Claim 42 would have been obvious in that extending the invention to both eyes would have improved vision in those with both eyes impaired.

Claim 43 would have been obvious in that a Dog's eye is similar to a humans.

***Allowable Subject Matter***

Claims 1-28 and 44-69 are allowed.

Claims 30-32 and 37-41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references cited show the level of skill in the art.

Any inquiry concerning this communication should be directed to Mark Hellner at telephone number 571 272 6981.

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/Mark Hellner/

Primary Examiner, Art Unit 3663